

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:11-CR-00119-F-1

UNITED STATES OF AMERICA

v.

KEVIN AUSTIN KIRBY,
Defendant.

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ORDER

This matter is before the court on a September 2, 2016 letter motion [DE-78] from the Bureau of Prisons ("BOP") regarding Kevin Austin Kirby. The BOP represents that on June 3, 2013, this court sentenced Kirby to a 60-month term of imprisonment for supervised release violations. *Id.* at 1. According to the BOP, Kirby has requested that his federal sentence be served *concurrently* with his state term. *Id.* Finally, the BOP requests this court's position on retroactive designation in this case. *Id.* at 2.

A review of the record reveals that at the time Kirby's federal sentence was imposed, on June 3, 2013, he was under primary jurisdiction of the state of North Carolina and in federal custody pursuant to a writ. On June 11, 2013, Kirby was sentenced by the state of North Carolina to a 41-month to 62-month term of confinement. The state of North Carolina ordered that the term was to be served concurrently with any other sentence he was currently serving.

A review of this court's Judgment reveals that it does not state whether the federal sentence was to be served concurrently or consecutively with Kirby's state term. Likewise, a review of the hearing on the motion for revocation of supervised release reveals that the issue was not specifically addressed.

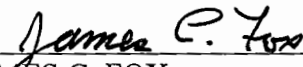
"Multiple terms of imprisonment imposed at different times run *consecutively* unless the

court orders that the terms are to run concurrently.” 18 U.S.C. § 3584(a) (emphasis added); *United States v. Butler*, 629 F. App’x 554, 558 (4th Cir. 2015); *Brown v. United States*, No. 7:12CR00073-3, 2016 WL 1296188, at *5 (W.D. Va. March 30, 2016).

In light of the foregoing, the BOP’s letter motion [DE-78] is ALLOWED to the extent that the court responds to its request regarding retroactive designation. The BOP is ADVISED that Kirby’s federal sentence is to be served consecutively with his state term. The Clerk of Court is DIRECTED to send a copy of this order to Chief Jose A. Santa with the U.S. Department of Justice, Federal Bureau of Prisons, Designation and Sentence Computation Center, U.S. Armed Force Reserve Complex, 346 Marine Forces Drive, Grand Prairie, Texas 75051.

SO ORDERED.

This, the 20 day of September, 2016.



JAMES C. FOX
Senior United States District Judge